

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 79 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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SATISH BHUPATBHAI RAJPUT

Versus

SUBDIVISIONAL MAGISTRATE

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Appearance:

MS KD PARMAR for Petitioner

NOTICE SERVED for Respondent No. 1, 3

Mr. U.R. Bhatt, APP for Respondent No. 2

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 06/05/98

ORAL JUDGEMENT

By this application, the petitioner challenges the legality and validity of the externment order dated 17th February 1997 passed by the Sub-Divisional Magistrate, Bhavnagar, under Section 56 of the Bombay Prohibition Act.

2. The facts which led the petitioner to prefer this application may in brief be stated. The petitioner by

his nefarious and subversive activities and also committing several criminal wrongs in succession was striking terror and was disturbing the public peace. He was by the use of the weapons beating the people or putting them in fear of instant death or grievous hurt, extorting money, and those who refused were brutally dealt with. In July 1995 on different dates and at different times he had been to different persons and using criminal force and by coercive measures he extorted money. When inquiry was made, it was found that about 4 complaints were registered in different police stations, two complaints were registered in 1993 and two were registered in 1994. As his nefarious activities were going berserk, the Sub-Divisional Magistrate at Bhavnagar thought it fit to check his activities and make the people free. The only way out was to extern upto 22nd March 1998. He therefore passed the order on 17th February 1997 directing the petitioner to leave the local limits of Bhavnagar, Amreli, Rajkot, Surendranagar and Ahmedabad (Rural) Districts. Being aggrieved by such order, the petitioner has filed this application challenging the legality and validity of the externment order.

3. On several grounds, the order is assailed, but at the time of submission the petitioner's learned advocate tapered off her submissions confining to the only point namely unjust delay caused in passing the order. According to the learned advocate representing the petitioner, the complaints about the offences registered in the year 1993 and 1994 are made the base of the order. On 3rd November 1995, the notice was issued and on 7th February 1997 the impugned order was passed. The delay is not explained. As there is inordinate delay in passing such order, the whole object of the order is made nugatory and so continued externment may be held to be illegal. Mr. U.R. Bhatt, the learned APP, in reply submitted that there was no such delay in passing the order, promptly the actions were taken and therefore the order cannot be held to be vitiated as canvassed.

4. To check subversive activities and maintain public order prompt action or action at the earliest is necessary but delay in all cases is not fatal. Unjust & avoidable delay is fatal. If delay is satisfactorily explained the order on the ground of delay cannot be held bad. To put in other words, where the time gap between the commission of the offence and the externment was inept to snap the irrationable nexus between the prejudicial activity and the purpose of detention would depend upon the facts of each case. The test of

proximity is not a rigid or mechanical calendar test to be blindly applied by merely counting the number of months and days between the offending acts and the order of externment. If the grounds are not stale and the nexus between the ground and the order of detention still exist, delay in passing the order would not be fatal, despite the fact that prompt action is required to be taken for curbing the activities and restoring normalcy. If the order is passed late though it was possible by the authority to avoid delay, it would certainly vitiate the order. In order, therefore, if the delay is explained and the explanation is reasonable, the delay would not be fatal. In this case, therefore, whether the delay is fatal is the question that arises for consideration.

5. The authority which passed the order has to file the affidavit and explain the circumstances in which delay is caused though he was sincere and had undergone the formalities promptly wasting no time. No such affidavit is filed by the authority and therefore the court is entitled to infer against that authority passing the order. The authority passing the order has mainly based his conclusion on four above stated offences alleged to have been committed in 1993 and 1994. If from the facts alleged in those complaints the authority had a reason to believe that the petitioner was the dangerous person and was striking terror in the society by his nefarious and subversive activities and committing the wrongs in succession, it ought not to have waited upto 3rd November 1995 the day on which for the first time notice was issued. Even after the issuance of the notice, immediate actions are not taken if at all the petitioner was found to be catastrophic and the order was passed on 17th February 1997. Such sluggishness & remissness on the part of the authority without any good cause is the strongest circumstance going to show that in fact there was no just cause to extern the petitioner, but the order was passed with some oblique motive or may be because of political pressure. The delay in this case therefore is fatal. The order on that count is required to be quashed and set aside.

6. For the aforesaid reasons, this application is allowed. The order of externment dated 17th February 1997 passed by Sub-Divisional Magistrate, Bhavnagar, in Externment Case No. 23 of 1995 is hereby quashed and set aside. The petitioner at present in jail is ordered to be set at liberty forthwith if not required in any other case. The petitioner is now free to enter into the local limits of the abovestated Districts. Rule accordingly made absolute.

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(rmr).